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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1966

No. 973

GERHARD BRASCH,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR REHEARING

GERHARD BRASCH,
3035 Gough Street, Apt. 8,
San Francisco, California 94123,
Petitioner in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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PETITION FOR REHEARING

Petitioner presents his petition for a rehearing of this Court's order dated February 27, 1967, denying the petition for a writ of certiorari to the Supreme Court of the State of California, and, in support thereof, respectfully shows:

REASONS FOR GRANTING REHEARING

The Court of Appeal of California, the Supreme Court of California and this Court have all denied petitioner an appellate hearing without opinions.

Thus the rights of a litigant who appears in court without counsel in a civil case, either because he is poor, or as in this case, because he cannot find counsel

to represent him in his case for legal malpractice, are left unanswered.

I.

In the case at bar petitioner requested entry of default judgment under the mandatory provisions of sections 586 and 585(1)(2) of the California Code of Civil Procedure, and the respondent court denied his unopposed request solely on the ground that petitioner was unrepresented by counsel. The respondent court stated that the mere fact that petitioner was unable to obtain counsel indicated that his case was without merit. The respondent court further held that if default was entered it would be set aside later.

It is petitioner's contention that this holding in effect was a denial of his Constitutional right of the equal protection of the laws under the Fourteenth Amendment since it divided plaintiffs requesting entry of default according to law into two classes: one represented by counsel whose requests for entry of default are granted and one appearing in propria persona whose requests for entry of default are denied, thus making arbitrary and unjust discriminations, founded on difference of representation between persons otherwise in similar circumstances, material to their rights, in violation of the prohibition of the Fourteenth Amendment and in direct conflict with the principles established by this Court in *Yick Wo v. Hopkins, Sheriff,* 118 U.S. 356, 373-374 and in *Virginia v. Rives,* 100 U.S. 313, 318.

The effect of the decree of the court below, if unreversed, is a permission for the State trial courts to

deny arbitrarily, rights which State law confers on all litigants to those who are not represented by attorneys if the opposing parties are represented by attorneys. The seriousness of this complete departure by the court below from the principles established by this Court more that eighty years ago, affirming the equal protection of the laws, upon the rights of other litigants without counsel, makes this case a peculiarly appropriate one for the exercise of this Court's discretionary jurisdiction.

II.

The trial court's denial of petitioner's request to enter default against the real parties in interest on the ground that petitioner was not represented by counsel, when said court would have entered default if petitioner had been represented by counsel, since the law requires entry of default upon request, was a denial of petitioner's Constitutional right of due process under the Fourteenth Amendment. The fact that petitioner had no counsel representing him was not a matter to be considered by the respondent court on a request for entry of default under sections 586 and 585(1)(2) of the California Code of Civil Procedure.

The decree of the court below, denying petitioner a hearing, is thus a sanction of the purely arbitrary and capricious denial of petitioner's request for entry of default by the respondent court and a general permission for the State trial courts to deny other unrepresented plaintiffs due process if the opposing parties are represented by counsel; and it is in conflict with

the principles established by this Court in *Truax v. Corrigan,* 237 U.S. 312, 332.

III.

All the courts below gave no reasons for denying petitioner's petitions in which he had claimed that the denial of his request for entry of default by the respondent court was a denial of his Constitutional rights of due process of law and of the equal protection of the laws under the Fourteenth Amendment. The real parties in interest did not oppose petitioner's requests for entry of default; his petition for a writ of mandate with the District Court of Appeal to compel the respondent court to enter their default according to law; his petition for a hearing with the court below; and his petition for a writ of certiorari with this Court.

For these reasons, the decree of the court below, without opinion, is in conflict with the decision of this Court in *Chapman v. State of California* of February 20, 1967 because this Court held in part III of this decision that the beneficiary of the error complained of must prove that there was no injury or suffer a reversal of his erroneously obtained judgment and "that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt".

The decree of the court below, if unreversed, means that in future cases litigants in propria will no longer stand equally with litigants represented by attorneys before the laws of the State of California and that

State court actions in such cases is immunized from the operations of the equal protection of the laws of the Fourteenth Amendment because the act is that of the judicial branch of the State of California.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of the State of California.

Dated, San Francisco, California,
March 14, 1967.

Respectfully submitted,
GERHARD BRASCH,
Petitioner in Propria Persona.

CERTIFICATE OF PETITIONER

I, Gerhard Brasch, petitioner in propria persona, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of the Court.

Dated, San Francisco, California,
March 14, 1967.

GERHARD BRASCH,
Petitioner in propria persona.